



Problems to be addressed in Iowa's Open Meetings and Open Records Laws.

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OPEN MEETINGS

I. Meeting by Memo.

A. Problem:

We are aware of the practice of at least one state commission that avoids the need for an open meeting in this way:

Someone, often agency staff, will initiate a discussion about a needed commission decision by circulating a paper memo with spaces left for comments to be added by members of the commission. Each commission member separately reviews the memo and adds his or her comment or decision. The memo may circulate 3 or 4 times before a consensus is reached. Eventually a decision is reached and the item is never discussed in a public meeting.

Apparently the justification for this process is considered to lie in the definition of "meeting" under the open meetings law.¹ Iowa Code Section 21.2, subsection 2 does not define "meeting" in terms broad enough to cover paper communications.

B. Possible Solutions

1. Re-define "meeting" to mean "any communication or series of organized communications between or among a majority of members of a government body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties"
2. Require all documents recording the discussion or decisions of a government body with respect to its policy decisions to be archived, indexed and posted electronically in a repository that can be accessed by the public through the internet.

¹ 2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties.

II. Public Notice of Meetings.

A. Problem:

There is no standardized process for publication or notice of meetings. Notices are dependent on such things as the willingness of the news media to relay announcement of the meetings to the public. Posting of meeting notices on a bulletin board is ineffective when the potential interest in learning of the meeting may be statewide. Lax standards may allow “stealth” meetings to be held in spite of the public meetings statute.

B. Possible Solutions:

1. Require all meetings of state public bodies to be posted into a single database accessible by the public on the internet. Each record of an announced meeting should include: Name of Body, “Purpose of Meeting”, Principal Action Items (or text copy of agenda), Location, Date, Contact Info for meeting and date of posting of the announcement.

A similar requirement could be imposed for local government.

2. If the Governmental Body maintains a website, Notice of anticipated Meetings should be required to be posted on that website as all.

III. What is a “government body”?

A. Problem:

Iowa Code Section 21.2(1)(f)² defines a “governmental body” as inclusive of publicly owned gambling establishments when they are supported by property tax dollars. This seems too narrowly targeted at Prairie Meadows. Other gambling establishments should also have to operate in the open air to discourage graft and corruption.

B. Possible Solutions:

1. The ACLU of Iowa would like to see a broadening of the definition to include the governing board or commission of any organization that is supported by public tax revenues or is charged with disbursing public funds whenever such organization is actually involved in making decisions regarding the receipt or disbursement of public funds

² 21.2 Definitions.

As used in this chapter:

1. "Governmental body" means: . . . f. A nonprofit corporation other than a fair conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

2. Organizations that generate revenues from publicly awarded exclusive franchises such as gambling or alcohol distribution should be subject to open meetings and records as well.

OPEN RECORDS

I. Overly broad exceptions

A. Problem:

A growing number of exceptions threaten to undermine the Open Records law.

One particularly irksome exception is the overly broad exception for personnel records {{22.7(11)}} which allows officials to hide the results of investigations into official misconduct and abuse committed by public employees. For example, if a law enforcement internal investigation sustains the accusations of an unlawful beating or racial harassment, the complainant may be told that the complaint has been sustained and appropriate action taken, but the public is not permitted to see the details of the investigation or to know the resulting disciplinary action because they are part of the employee's "confidential" personnel file.

B. Possible Solutions:

1. New additional language for Iowa Code Section 22.7, subsection 11:

For purposes of this Chapter, "personal information" does not include the fact finding, results, conclusions and disciplinary or remedial actions taken with respect to official misconduct by the employee including but not limited to instances of unlawful assault or violence, fraud or dishonesty, violations of constitutional rights or interference with justice.

2. We question the need for exception 39 cloaking the identity of sellers of livestock.

3. Exception 43 (dealing with information collected by the Commissioner of insurance) conflicts with the language of Iowa Code Section 502.607 by being too broadly worded. Instead, it should read: "to the extent that the information is not public under Iowa Code Section 502.607."